Supreme Court, U.S.
FILED
JAN 21 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. 87-933

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

GORDON MIMS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

NEIL F. HARTIGAN,
Attorney General
State of Illinois
TERENCE M. MADSEN
Assistant Attorney General
188 West Randolph Street,
Suite 1200
Chicago, Illinois 60601

Attorneys for Respondent.

RICHARD M. DALEY
State's Attorney
County of Cook
500 Richard J. Daley Center
Chicago, Illinois 60602
JOAN S. CHERRY,*
LYNDA A. PETERS,
Assistant State's Attorneys
Of Counsel.

*Counsel of Record.

QUESTION PRESENTED FOR REVIEW

Whether petitioner was proven guilty beyond a reasonable doubt of burglary in violation of the Illinois Criminal Code.

TABLE OF CONTENTS

	Page
Question Presented.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Opinion Below.....	1
Jurisdiction.....	3
Statement of the Case.....	4
Reason for Denying the Writ:	
NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED SINCE THE ISSUE PETITIONER SEEKS TO HAVE REVIEWED INVOLVES NO MORE THAN THE APPLICATION OF STATE LAW TO THE PARTICULAR FACTS OF THIS CASE.....	5
Conclusion.....	14

TABLE OF AUTHORITIES

	Page
In Re Winship, 397 U.S. 358 (1970).....	13
People v. Mims, No. 86-1146 (1st Dist. Jan.29, 1987).....	11,12
United States v. Johnson, 268 U.S. 220 (1925).....	13

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

GORDON MIMS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

Petitioner was convicted of burglary in the Circuit Court of Cook County, Illinois. (R. 52) Petitioner's conviction was affirmed in an unpublished opinion dated January 29, 1987, by the First District Appellate Court of Illinois. People v. Mims, No. 86-1146 (1st Dist. 1987). This opinion

affirmed the judgment of the circuit court which found petitioner guilty of burglary beyond a reasonable doubt. (See Petitioner's Appendix A.)[1] The First District Appellate Court of Illinois subsequently denied petitioner's Petition for Rehearing on April 9, 1987. (See Petitioner's Appendix B.) The Illinois Supreme Court entered an order on October 7, 1987, denying leave to appeal. (See Petitioner's Appendix C.)

---

[1]Since the Illinois Appellate Court's opinion in People v. Mims is unpublished and is attached to petitioner's brief as "Appendix A", the People will cite to this decision as "Pet. App. A at ___."

JURISDICTION

The jurisdictional requisites have been set forth in the Petition for Writ of Certiorari. However, as treated more fully within the following argument, the respondent believes that petitioner has failed to show any good reason for this Court to exercise jurisdiction to review the judgment in question by writ of certiorari.

STATEMENT OF THE CASE

The procedural history of this case is adequately set forth in the opinion of the First District Illinois Appellate Court and, therefore, will not be set forth at length here. Respondent directs this Court's attention to the opinion of the lower court as well as to the argument portion of this brief wherein the pertinent facts have been incorporated.

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED SINCE THE ISSUE PETITIONER SEEKS TO HAVE REVIEWED INVOLVES NO MORE THAN THE APPLICATION OF STATE LAW TO THE PARTICULAR FACTS OF THIS CASE.

The issue in this case, as framed by the First District Illinois Appellate Court, is whether "the testimony adduced at trial fails to establish that he [petitioner] unlawfully entered the Sbarbaro School premises." In deciding that the evidence was sufficient to convict petitioner, the Illinois Appellate Court relied solely on its interpretation of Illinois caselaw and the applicable criminal statute. The court did not engage in an analysis of the United States Constitution or any federal caselaw in

reaching its decision. Thus, no federal question is presented for review in this Honorable Court. Since the instant petition involves no more than the application of state law to a particular set of facts, the instant petition for writ of certiorari should be denied.

On September 3, 1984, at approximately 1:30 a.m., Chicago Police Officer Hollis Petway received a radio broadcast that the silent alarm at Sbarbaro Elementary School had been activated. (R. 4) One and one-half minutes later the officer and his partner arrived at the school. (R. 6) The officers first drove past the front of the school, at which time no one was observed to be standing in the front alcove by the doors or anywhere else around the front of the building. (R. 23) The officers then proceeded to circle the building, shining a

light into the windows as they passed. (R. 6, 23)

After several minutes, the officers returned to the front of the building where they observed two black males run together from the alcove area of the school, westbound and down a nearby alley. (R. 7, 8, 23) One of the fleeing men was identified in-court as petitioner. (R. 11) The officers drove to the mouth of the alley where they parked their car and followed on foot. (R. 9) Officer Petway observed no one in the alley, but saw a pair of shoes by the back gate of the yard behind the second house. (R. 9) The officers then returned to their squad car, circled the block and proceeded back to the school. (R. 8)

At that time, petitioner was observed to be walking down the street, barefoot and breathing heavily, within one

block of the school. (R. 9, 10) Officer Petway recognized petitioner as one of the two men who he had seen run from the front of the school minutes earlier. (R. 11) Petitioner was briefly questioned, told to put the recovered shoes on and placed under arrest. (R. 10, 11, 23)

A subsequent search of the school revealed that the front and back doors were locked. (R. 22) The front door was observed to be a breaker-bar door, a door that is locked from the outside and can be opened from the inside only by depressing a bar. (R. 12) A further search of the school disclosed that a window on the second floor of the rear of the building was partially opened. (R. 12)

In his defense, petitioner testified that he left his home on the night of the incident, barefoot, to purchase some

cigarettes from a nearby gas station. (R. 32, 33) After buying the cigarettes, petitioner walked several blocks past his home to the Sbarbaro School. (R. 41) He walked into the front alcove area of the school to light a cigarette. (R. 42) Suddenly the school doors burst open and a man ran past petitioner, down a nearby alley. (R. 42) After observing an armed police officer pursue the man, petitioner followed them down the alley. (R. 34, 45-46) Petitioner then returned to the street where he was placed under arrest. (R. 35, 47, 48)

The circuit court found petitioner's version of what happened to be incredible and entered a finding of guilty of burglary. (R. 52) In affirming this finding, the Illinois Appellate Court relied on the following state statute and case law:

"A person commits burglary when without authority he knowingly enters *** a building *** with intent to commit *** a felony or theft." (Ill. Rev. Stat. 1985, ch. 38, par. 19-1(a); see People v. Gilman (1983), 113 Ill. App.3d 73, 446 N.E.2d 595.) The crime of burglary can seldom be proved by direct evidence of an actual breaking and entering. (People v. Richardson (1984), 104 Ill.2d 8, 13, 470 N.E.2d 1024; People v. Hohmann (1966), 72 Ill. App.3d 374, 219 N.E.2d 621.) In most cases, the entry may be inferred from other facts in evidence or circumstances proved. People v. Blakeney (1978), 59 Ill. App.3d 119, 375 N.E.2d 1309; People v.

Davis (1977), 54 Ill. App.3d 517, 369 N.E.2d 1376; People v. Cokely (1977), 45 Ill. App.3d 888, 360 N.E.2d 545; People v. Hohmann (1966), 72 Ill. App.2d 374, 219 N.E.2d 621. People v. Mims, Pet. App. A at 6.

Specifically, the appellate court found that the evidence presented at trial revealed, through petitioner's own testimony that at least one other suspect was in the building, that the Sbarbaro Elementary School had been unlawfully entered. Pet. App. A at 7. The element of unlawful entry was also found to be established circumstantially. Id. at 8. The evidence revealed that when the police officers initially arrived at Sbarbaro School the front alcove area was empty but, after shining a light into the building's windows

for a few minutes, petitioner and another suspect were observed fleeing from the alcove. Id. at 8. Officer Petway pursued petitioner down an alley, recovered a pair of shoes, and arrested petitioner a short distance down the street from the school, barefoot and breathing heavily. Id. at 8. The appellate court also ruled that a thorough review of the evidence gave rise to the inference that petitioner and his accomplice unlawfully entered the school with the intent of committing a theft therein. Id. at 9.

Despite petitioner's claims to the contrary, the circuit and appellate courts' conclusion that he committed burglary is not "wholly built on speculation and conjecture" or "inferences piled on inferences." (Pet. Br. 15) Rather, the courts' conclusion was based on one set of inferences drawn from the

evidence presented at trial. Accordingly, the presumption of innocence and the requirement of proof beyond a reasonable doubt inherent in the concept of due process of law were not violated. In Re Winship, 397 U.S. 358, 361-364 (1970).

The question petitioner presents to this Court revolves entirely on the facts of this case and the application of state law to those facts. Petitioner wishes this Court to expend its valuable resources to examine a single set of facts and the law of a single state to resolve the issue of whether he was proven guilty beyond a reasonable doubt of burglary. This type of review has already been engaged in by the Illinois Appellate Court. As Justice Holmes once observed, "[W]e do not grant certiorari to review evidence and discuss specific facts." U.S. v. Johnson, 268 U.S. 220, 227 (1925). The

instant petition for writ of certiorari should be denied.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the respondent respectfully prays that this Honorable Court deny the instant petition for a writ of certiorari.

Respectfully submitted,

NEIL F. HARTIGAN,
Attorney General
State of Illinois
TERENCE M. MADSEN,
Assistant Attorney General
188 West Randolph Street,
Suite 1200
Chicago, Illinois 60601

Attorneys for Respondent.

RICHARD M. DALEY
State's Attorney
County of Cook
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 443-5496
JOAN S. CHERRY,*
LYNDA A. PETERS,
Assistant State's Attorneys
Of Counsel.

*Counsel of Record.